

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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MARK LATIMER,

Case No. 21-CV-1559 (DSD/JFD)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

MDOC, SHERLINDA WHEELER,  
CHRIS PAWELK, and CHAD OYE,

Defendants.

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In an Order dated July 8, 2021, Plaintiff Mark Latimer was ordered to pay an initial partial filing fee of \$61.33. (Order at 3, Dkt. No. 3.) Mr. Latimer was given until July 29, 2021 to pay the fee, failing which the Court would recommend dismissing this action without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b). On August 12, 2021, the Clerk of Court sent Mr. Latimer a letter giving him until August 26, 2021 to submit proof of payment—again, failing which the Court might recommend dismissing this action for failure to prosecute. (Ltr. at 1, Dkt. No. 8.)

These deadlines have now passed, and Mr. Latimer has not paid his initial partial filing fee. Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a

plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

Based upon the foregoing, and on all of the files, records, and proceedings herein,  
**IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: September 1, 2021

s/ John F. Docherty  
JOHN F. DOCHERTY  
United States Magistrate Judge

#### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).